

UNITED STATES DISTRICT COURT

for the
Eastern District of North CarolinaFILED
MAR 14 2011
DENNIS P. IAVARONE, CLERK
US DISTRICT COURT, EDNC
BY DS DEP CLKIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)400 Mabry Mill Road
Henderson, NC, any outbuildings, vehicles located
at/near said premises in control of Robert Minish

Case No. 5:11-mj-1188

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A

located in the Eastern District of North Carolina, there is now concealed (identify the person or describe the property to be seized):

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 USC Section 641Offense Description
Theft of Government Property

The application is based on these facts:

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signatureCatherine M. Mulhern, Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: March 14, 2011City and state: Wilmington, NC
Judge's signatureRobert B. Jones, Jr., USMD
Printed name and title

copy to agent

**AFFIDAVIT
NAVAL CRIMINAL INVESTIGATIVE SERVICE**

1. I, Catherine M. Mulhern, a Special Agent (SA) with the Naval Criminal Investigative Service (NCIS), stationed at the NCISRA Camp Lejeune, NC (CLNC), being duly sworn, depose, and state that your affiant has been employed as a Special Agent with NCIS since February of 2009 and is currently assigned the Marine Corps Base (MCB) Camp Lejeune General Crimes criminal investigations squad. Prior to assignment to the General Crimes squad, your affiant was assigned as an SA working Family and Sexual Violence investigations. Your affiant is a graduate of the Criminal Investigator Training Program and the Special Agent Basic Training Program located at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA. Your affiant has worked varied criminal investigations, as well as joint investigations with local and federal law enforcement agencies. Prior to employment with NCIS, your affiant was a sworn law enforcement officer in the state of NY for over three years, working investigations into Organized Crime cases. I have received extensive training and experience conducting criminal investigations into violations of the U.S. Code and the Uniform Code of Military Justice. I have been conducting a joint investigation with several agents from the Defense Logistics Agency (DLA) and the NC State Bureau of Investigation (SBI). In the collective experience of the Agents assigned to this case, we have accumulated over 100 years law enforcement experience and executed numerous search warrants in similar investigations and seized incriminating evidence in every instance.

PREMISES TO BE SEARCHED

2. I make this affidavit in support of a search warrant for the following premises:

The residence of Robert Brian MINISH (MINISH), located at 400 Mabry Mill Rd, Henderson, Vance County, NC. Mabry Mill Rd intersects Satterwhite Point Rd in a rural area adjacent Kerr Lake in Henderson, NC. MINISH'S residence is a two-story, single family dwelling framed structure, with gray colored siding, white colored trim and a white fence in the front yard. The numbers "400" are affixed to the mailbox directly across from the driveway (SEE ATTACHED ENCLOSURE).

Any motor vehicles owned by, registered to or in the possession or control of MINISH, DOB 27Jul55, specifically, but not limited to a tan in color older model Chevrolet Silverado pick-up truck, with light bar affixed to the roof.

Outbuildings, sheds, barns, garages or other structures located on MINISH'S property.

Any off site storage units found to be rented by of for MINISH.

PROPERTY TO BE SEIZED

3. I have probable cause to believe that within the premises described above is:

Computers and computer accessories

Currency

Physically and electronically stored records including invoices, payments, notes; ledgers; estimates; receipts; tax records and preparation forms; contracts; clientele lists; address/phone lists

Photographs and video tapes

Bank and other financial records

Credit card records

Lodging and travel receipts

Educational or licensing expenses

Various other types of records related to the purchase, sale or delivery of military property.

Winchester Model 1200 "Trench Gun" Shotguns and/or parts thereof;

Colt Model 1911 .45 Caliber Semi-automatic Pistols and/or parts thereof

M16 and M14 Assault Rifles and/or parts thereof

Military radios

Firearms sights

Spotting scopes

Night vision devices

Other government owned property

PROBABLE CAUSE

4. This search is for evidence concerning offenses enumerated under Title 18 USC, Sections 641 (Theft of Government Property), USC 1001 (False Statements), 18 USC 1341 (Mail Fraud), 18 USC 1343 (Wire Fraud), 18 USC 1956 and 1957 ("Money Laundering").

5. This investigation was initiated following notification from the Defense Logistics Agency (DLA) that MINISH is suspected of thefts, frauds and conspiracy against the United States by embezzling property of the Department of Defense and ultimately converting that property to personal use as well as unlawfully selling that property for personal financial gain. The statements in this affidavit are based on information provided by other sworn law enforcement agents. Your affiant wishes to search the residence, outbuildings, storage units and vehicles maintained by MINISH.

6. DLA is the Department of Defense (DoD) Agency responsible for administering the Law Enforcement Support Office (LESO) Program. The LESO program loans surplus DoD property (including firearms, aircraft, vehicles and all sorts of military property) to State and Local Law Enforcement Agencies (LEA's). The State of North Carolina established the NC Law Enforcement Support Services (LESS) to coordinate property transfers from DLA to State and Local LEA's within NC. Neil WOODCOCK was the Director of NC LESS until December, 2009. MINISH was the NC LESS Firearms Program Manager until June, 2010.

7. Every item within the DoD Supply Chain is assigned a demilitarization code (demil code) in accordance with Title 22 U.S. Code, Section 2778 of the Arms Export Control

Act (AECA). The AECA provides the authority to control the export of defense articles, defense services and technical data, and charges the President of the United States to exercise this authority. Executive Order 11958, as amended, delegated this statutory authority to the Secretary of State. 22 CFR 120-130, the International Traffic In Arms Regulation (ITAR) implements this authority. The U.S. Munitions List (22 CFR 121) identifies Munitions List Items (MLI). The DEMIL Codes for MLI are established and identified in the Defense Demilitarization Manual (DoD 4160.21-M-1) and as currently revised in the new DRAFT DEMIL Manual. DoD property assigned DEMIL Codes B, C, D, E, F, G and P are MLI. These items require MUT-mutilation (DEMIL B) or DEMIL-demilitarization (DEMIL C, D, E, F, G and P) prior to release from DoD control.

8. Demil Code C is assigned to certain Munitions List Items which require removal of key components prior to release from DoD control. Demil Code D is assigned to certain Munitions List Items requiring total destruction prior to release from DoD control. The items sold on eBay by MINISH (infra) are Demil Codes C and D. As a Supply Specialist and retired military person, MINISH had been trained to understand Demil Codes and dealt daily in his professional capacity at NC LESS with documents affirming the items could not leave DoD control without being demilitarized.

9. During May, 2009, the DLA Accountability Office initiated an Audit of randomly selected States participating in the LESO Program. A random sampling of LEA's was selected to be audited within each State that was selected for the Audit. NC was randomly selected for the Audit. Due to the proximity of DLA Special Agents at Camp Lejeune, NC, DLA special agents performed the Audit within the State of NC. In preparation for the Audit, DLA forwarded to Mr. WOODCOCK, an advance copy of a spreadsheet of items to be inspected. The items included firearms, aircraft and vehicles loaned to each LEA selected for the Audit. The spreadsheet listed various firearms as being located at NC LESS. During the Audit in-brief at LESS, 1200 Transport Dr, Raleigh, NC on April 27, 2009, MINISH told DLA Special Agents Patrick W. GOOKIN and James L. SUTTON that the DLA records were incorrect, claiming that no firearms were located at NC LESS. He claimed no firearms had ever been at LESS and that LESS was forbidden from possessing the firearms. LESS personnel are Supply Personnel, not law enforcement personnel, and are not licensed to possess automatic weapons. There is also not an adequate storage facility for firearms at the LESS Warehouse. Many of the firearms loaned from DLA to LEA's are fully automatic M16 and M14 Rifles. Special Agents GOOKIN and SUTTON watched as MINISH queried the LESS computer databases for these (missing) firearms. As he typed each serial number into the system, the computer auto-filled the remainder of the serial number, indicating it had been entered into the system previously. The computer "recognized" the serial numbers of the missing firearms. However, the computer had no current listing indicating the firearm was located at any LEA in NC. It appeared the serial number had been entered into the system in the past, but had since been deleted. The DoD had no record of the firearms being returned to DoD by the State of NC. As Firearms Program Manager for NC LESS, MINISH had passwords and authority to enter and delete records from their database, as well as transfer records of firearms from one LEA to another LEA.

10. DLA special agents scoured LEA's throughout the State of NC, searching for the missing firearms. Three DLA Special Agents went to various LEA's through NC interviewing personnel and viewing their records between April 27 and May 12, 2009. Agents searched fruitlessly as MINISH continually contradicted himself concerning the location and status of the missing firearms. For example, MINISH claimed during the in-brief that he never handled weapons. Personnel interviewed by Special Agents GOOKIN and SUTTON at each of the LEA's described giving custody of weapons to MINISH at their respective LEA's and at NC LESS. When questioned about each of these contradictions, MINISH explained he made a one-time exception to transfer weapons from one LEA to another. After being warned a criminal investigation would ensue, MINISH reported the missing firearms were turned in to him by a local LEA on May 12, 2009. Special Agent GOOKIN met with MINISH at LESS and viewed the firearms, verifying the serial numbers to conclude they were in fact the firearms reported missing. MINISH claimed the Chief of a defunct police department turned in some of the firearms. MINISH'S explanation concerning the firearms continued to change. Eventually, on May 12, 2009, while in his office at NC LESS, MINISH admitted to Special Agent GOOKIN that MINISH had the firearms stored in the warehouse at LESS all along. He has stored hundreds of weapons at LESS over the past several years, because it was easier to store them at LESS than to relinquish them to DLA, and then request more firearms when another LEA wanted firearms. While in his office at LESS on May 12, 2009, MINISH told Special Agent GOOKIN it was "just a little secret we're trying to keep from LESO." MINISH and WOODCOCK were instructed by Special Agent GOOKIN to immediately ship the weapons to DoD or an appropriate LEA. WOODCOCK provided photographs of several-hundred rifles, pistols and shotguns stored in the LESS Warehouse, secured only by a household-grade padlock.

11. On May 20, 2010, the NC SBI reported receipt of information from a former NC LESS employee concerning MINISH selling LESO items on eBay as early as 2005, and as recent as May 2010. The veracity of the complainant was corroborated thru eBay records of MINISH's sales and matching items sold by MINISH on eBay with DoD Turn in Documents, LESS Requisition Documents and Military serialized inventory records (infra). The items included Night Vision, Spotting Scopes, Scope Shield Radios, Aimpoint Sights, numerous parts for Winchester Model 1200 Trench guns, and various other items. Each of these items were Demil Code C or D. They were forbidden by law from being released to the public without being demilitarized. The SBI was informed neither LESS nor LESO tracked these items by serial numbers. Before they interviewed MINISH, the State Capitol Police found MINISH was carrying a concealed, loaded firearm in the LESS office, in violation of NCGS 14-415.11. When the SBI attempted to interview MINISH, he invoked his right to remain silent. Subsequently, the SBI assumed they would not be able to prove the items were in fact stolen from LESO/LESS.

12. The State of NC moved to terminate MINISH's employment. While he was on Administrative Leave, a package arrived at LESS with his name (misspelled) on it, with a return address of: ACSO, 109 South Maple Street, Graham, NC 27253. State investigators determined ACSO stood for the Alamance County Sheriff's Office. The next day, MINISH arrived at LESS to provide passwords to computer systems and other

information to assist LESS in his absence. When he was advised a package had arrived for him, he shied away from it and said he wasn't expecting a package. After he left, LESS personnel opened the package. It contained six pistols and a note to MINISH reflecting these are the pistols we spoke about. Some of the serial numbers matched serial numbers of pistols hidden from agents during the 2009 Audit. The NC LESS database reflected some of these pistols were listed as assigned to various LEA's throughout NC. However, officials at these LEA's disputed the accuracy of the records, and report those weapons were not assigned to their respective LEA or had been returned to LESS.

13. As MINISH was being placed on Administrative Leave, NC Crime Control and Public Safety Deputy Secretary Rhonda Raney told MINISH to return any and all items that belonged to LESS. Shortly after MINISH was placed on leave, a NC LESS employee observed an unknown white male returning an item of property that belonged to LESS/LESO, that MINISH had taken. The employee does not recall which items it was, but it was one of many items anonymously returned to LESS which was previously known by LESS employees to be in MINISH's possession. Other LESO/LESS items that were believed to be in the possession of MINISH were returned to LESS without LESS employee's knowledge or observation of exactly who returned the items. The returned property consisted of generators, lights, a golf cart, night vision scopes (Demil D) and various other DoD items. The golf cart had State Emblems on it during the 2009 Audit, identifying it as state-owned. The emblems had been obliterated after MINISH took it from LESS.

14. LESO records reflect ACSO never had any firearms loaned to them. ACSO personnel report they had not sent any pistols to LESS. U.S. Postal records reflect someone queried postal online records to see if the package had been delivered to LESS. The Internet Protocol (IP) Address used to query the package was from the Kerr Lake Volunteer Fire Department (VFD). MINISH was the President of the Kerr Lake VFD. Mark MINISH and Claude OHAGAN are board members of the VFD.

15. MINISH agreed to be interviewed by the SBI in the presence of his attorney on September 16, 2010. Initially, he denied shipping the six pistols to LESS. After being confronted with evidence of the IP Address, he admitted he shipped the pistols. He claimed he had taken them to clean one, repair one, and shoot the others. He denied selling LESO/LESS property on eBay. He said all of the property he sold on eBay was either bought by him on eBay for a cheaper price then he resold it for a higher price; or was bought by him at flea markets and yard sales. SBI agents asked if MINISH possessed any other LESO/LESS property. MINISH thought the only items he currently had that belonged to LESO/LESS was a ladder and buffer.

16. On October 5, 2010, MINISH called LESS and reported that MINISH had just dropped off some LESO property at LESS. The property consisted of a Mine Detecting Set, Starlight Night Vision Scopes, Night Vision Goggles, a CVC Helmet, body armor and a flack jacket. These items were all Demil Code C and D.

17. The SBI subpoenaed eBay records of MINISH. eBay records indicate MINISH operates his eBay business from his residence, 400 Mabry Mill Rd, Henderson, NC; but also shipped eBay items from NC LESS (1200 Transport Dr, Raleigh, NC). None of the military items he sold had been previously purchased by him on eBay. The records confirm the veracity of the initial complainant – MINISH sold demil-required items on eBay, which are identical to the items loaned from DoD to NC LESS.

18. DLA agents contacted eBay buyers and acquired the serial number of the items purchased from MINISH. The agents acquired corresponding Requisition Documents LESS filed with LESO. Each Requisition Document has a unique identification number to identify the transaction. That identification number was matched with a corresponding number on the Turn In Document where a Military Unit turned in the surplus property to DLA. Agents contacted the specific Military Units who turned in the items. Some of the Units had serialized lists of items they turned in. The Serial Numbers of a (Demil D) M49 Spotting Scope, Serial Number 26816, sold on eBay by MINISH to a man in Denver, CO; and the Serial Number of a (Demil D) M49 Spotting Scope, Serial Number 26861, sold on eBay by MINISH to a man in Whitehall, MD matched the Serial Numbers of M49 Spotting Scopes turned in to DLA by the Weapons Training Battalion aboard Camp Lejeune, NC. The DLA documents trace those specific scopes to being issued to LESS via the LESO Program.

19. On July 1, 2010, the Kerr Lake VFD was taken over by the government of Vance County NC. Prior to assuming control of the VFD, Vance County officials viewed the fire station and discovered a large quantity of DoD equipment stored on the premises. The Fire Marshal described it as looking like “Sanford and Son.” They learned MINISH used State-owned trucks to offload property at the VFD and that MINISH told Volunteer Firefighters that he got the property from LESS. They directed MINISH to remove the property from the premises. During the first week of July, 2010, MINISH and OHAGAN were observed loading two large safes onto their personally owned pickup trucks and departing the VFD with the property. A witness reports OHAGAN claimed to have taken the safes to his home. The safes are described as dark colored, approximately chest high, 24-36” wide with one large door and combination dial on the front. Witnesses report they were still wrapped in plastic and appeared to be brand new. They match the description of safes acquired by NC LESS via the LESO Program, which were shipped to LESS wrapped in plastic, some of which were new. They are no longer in LESS inventory, and there are no records of LESS issuing them to an LEA.

20. On September 3, 2010, Vance County officials gave consent to search the Kerr Lake VFD for evidence of theft. There was a large red colored Snapon brand tool chest with a Marine Corps Emblem and black letters and numbers stenciled on it. There were two large olive drab colored industrial tool bins. DLA agents matched LESS Requisition Documents, LESO Issue Documents and USMC Turn In Documents which revealed the 8thEngSuptBn, 2dMLG aboard Camp Lejeune turned in Snapon tool chests which were subsequently issued by LESO to LESS. Agents contacted SSgt Clemento J. BATISTA, USMC who viewed the photograph of the Snapon tool chest at the VFD. SSgt BATISTA identified the stenciling on the tool chest as his Unit Identification Code, his work section

code, and a serial number created by his work section in order to discern that specific tool chest from all other tool chests. He provided a copy of his paperwork indicating that specific serial number was turned in to DLA on the same document number matching the document number on the NC LESS Requisition.

21. DLA agents acquired Requisition Documents where NC LESS acquired a matched set of olive drab industrial tool bins from DLA. They were all keyed-alike. Agents acquired one key from LESS for one of their remaining tool bins. In February, 2011, agents conducted a consent search of the Kerr Lake VFD. The key from LESS fit and worked the lock on the tool bins at the VFD. The Snacon tool chest had been altered after it was photographed in September 2010 – the USMC Emblem and the Snacon Emblem had been removed, and the stenciled numbers had been painted over. The tool bins and the Snacon tool chest were seized as evidence.

22. Due to the evidence of thefts by MINISH, DLA conducted a 100% inventory in October, 2010, of all firearms loaned to LEA's in the State of NC. Approximately 3,000 firearms were brought from LEA's to LESS for inventory. Thirty firearms, including Winchester Model 1200 Trench Guns, M16 Automatic Rifles, M14 Automatic Rifles and .45 Caliber Pistols were missing. Officials from the Hoke County NC Sheriff's Office (HCSO) report sometime around the Spring of 2008, two employees from the state agency that was responsible for the guns (LESS) (whose names they could not recall but fit the physical description of WOODCOCK and MINISH and no others at LESS) were at the HCSO and took possession of various pistols and M14 Rifles. The LESS officials did not provide a receipt to HCSO. Two of those pistols were among the six pistols MINISH mailed to LESS under a ruse. The M14 Automatic Rifle remains missing.

23. David Farmer, employed at NC LESS, reports during the Spring of 2010, MINISH told FARMER a prison system in Wyoming was interested in acquiring the Scope Shield Radios in stock at LESS. Scope Shield Radios are military radios used in combat. The Scope Shield Radios at LESS were new, in foil wrappers. They are Demil Code C. MINISH asked FARMER to locate the radios in the warehouse. FARMER recalled a few days later, he saw the foil wrappings in the trash adjacent MINISH's work station, adjacent a bunch of eBay documents. DLA agents interviewed Prison Personnel in Wyoming who had transferred items from NC LESS to the prison in WY (in accordance with LESO policy). They recalled conducting transactions with MINISH, but were adamant they never had any conversation with him regarding any radios. As of February 28, 2011 MINISH currently has (non-Military) items listed for sale on eBay.

24. Firefighters at the Kerr Lake VFD report MINISH told them he acquired property from NC LESS that he brought to the VFD in State-owned vehicles and his personally owned pickup truck. The items consisted of safes, tool bins, the Snacon tool chest, emergency strobe light systems for emergency vehicles, and generators. They report MINISH sold some of the stolen emergency light systems to co-Firefighters, installed them on his own pickup truck, and on Mark MINISH's pickup truck. They also report MINISH had firearms for sale, although none of them saw the firearms, one of them said MINISH offered to sell semi-automatic pistols and assault rifles. The .45 caliber pistols

missing during the recent inventory are semi-automatic pistols, and the six pistols MINISH returned to LESS under a ruse are semi-automatic pistols. The M16 and M14 Rifles missing in the recent inventory are considered Assault Rifles.

25. DLA Trade Securities Controls Office assesses all persons who request to purchase surplus DoD property from the government. Neither MINISH nor OHAGAN have been assessed nor authorized to purchase surplus DoD property.

26. The sum total of military property known to have been sold by MINISH or otherwise stolen by MINISH is \$54,700. This does not include the value of any of the 30 firearms annotated as missing during the October 2010 100% inventory.

27. EBay records reflect MINISH currently operates his eBay sales business from his residence, 400 Mabry Mill Rd, Henderson, NC. In the experience of the agents involved in this joint investigation, we have found it commonplace for suspects with legitimate and illegitimate businesses and income to co-mingle evidence of unlawful financial transactions and ill-gotten gains within their records of legitimate transactions and gains, in every instance thus far, stored at their residence and business site. Such evidence regarding sales via eBay includes but is not limited to: computers and computer accessories; currency; physically and electronically stored records including invoices, payments, notes; ledgers; estimates; receipts; tax records and preparation forms; contracts; clientele lists; address/phone lists; photographs and video tapes; bank and other financial records; credit card records; lodging and travel receipts; educational or licensing expenses; and various other types of records related to the purchase, sale or delivery of military property. Aside from evidence of eBay sales, in the collective experience of the agents involved in this investigation, we believe MINISH possesses Winchester Model 1200 "Trench Gun" Shotguns and/or parts thereof; Model 1911 .45 Caliber Semi-automatic Pistols and/or parts thereof; M16 and M14 Assault Rifles and/or parts thereof; military radios, firearms sights, spotting scopes, and night vision devices. We believe the aforementioned evidence is located within MINISH's residence, 400 Mabry Mill Rd, Henderson, NC.

28. Based on the facts and circumstances provided herein, your affiant believes there is probable cause to believe MINISH made materially false statements; stole firearms and other government property; and sold stolen property on eBay; and laundered for the purpose of promoting Specified Unlawful Activities (SUA), i.e. mail and wire fraud and for concealing the nature, location, source, ownership and control of the SUA, investing ill-gotten monies into daily living expenses incurred by MINISH and that there is physical evidence of those crimes located within MINISH's residence, 400 Mabry Mill Rd, Henderson, NC.

29. Therefore, your affiant respectfully requests authority to search the MINISH residence for the aforementioned evidence and any other physical evidence, specifically related to MINISH'S theft of military property issued by the LESO Program; and any military property requiring demilitarization prior to release from DoD control in that any such property in MINISH's possession would be contraband.

SA Catherine M. Mulhern

Special Agent Catherine M. Mulhern
Naval Criminal Investigative Service

SWORN TO AND SUBSCRIBED before me,
This 14th day of March 2011,

United States Magistrate Judge

ATTACHMENT B

Evidence of the crimes of Theft of Government Property, False Statements, Mail Fraud, Wire Fraud, Money Laundering, the rendering of such property and sale thereof; contraband, fruits of crime, of other illegally possessed, property designed for use, intended for use, of used in committing the crimes aforementioned, to include, but not limited to the following:

- Computers and computer accessories

- Currency

- Physically and electronically stored records including invoices, payments, notes; ledgers; estimates; receipts; tax records and preparation forms; contracts; clientele lists; address/phone lists

- Photographs and video tapes

- Bank and other financial records

- Credit card records

- Lodging and travel receipts

- Educational or licensing expenses

- Various other types of records related to the purchase, sale or delivery of military property.

- Winchester Model 1200 "Trench Gun" Shotguns and/or parts thereof;

- Colt Model 1911 .45 Caliber Semi-automatic Pistols and/or parts thereof

- M16 and M14 Assault Rifles and/or parts thereof

- Military radios

- Firearms sights

- Spotting scopes

- Night vision devices

- Other government owned property

